

**Letter of Findings: 02-20130231
Indiana Corporate Income Tax
For the Year 2011**

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ISSUE

I. Corporate Income Tax – Net Operating Losses ("NOLs").

Authority: I.R.C. § 172; I.R.C. § 382; IC § 6-3-2-2.6; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dept of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protested the Department's disallowance of carrying over NOLs, resulting in an additional assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayer is a multinational company doing business in Indiana. Taxpayer and its subsidiaries have been filing Indiana consolidated income tax returns. In 2008, Taxpayer acquired a limited liability company (including the subsidiaries), which also does business in Indiana ("Indiana LLC"). The Indiana LLC incurred net operating losses before it was acquired. After the merger and acquisition, the Indiana LLC has been treated as a disregarded entity for income tax purposes.

In 2010, the Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's records for the 2008 tax year. As a result of the audit, the Department determined that the Indiana LLC had substantial net operating losses ("NOLs") prior to the acquisition. Thus, Taxpayer was allowed to carry forward the pre-acquisition NOLs subject to limitations outlined in I.R.C. § 382.

In early 2012, Taxpayer amended its Indiana income tax return for the 2010 tax year pursuant to a federal audit RAR adjustment. The Department reviewed Taxpayer's amended 2010 return and recorded the information reported. Subsequently, Taxpayer filed its 2011 corporate income tax return. However, after review, the Department determined that Taxpayer did not have sufficient NOLs to be carried forward and applied to the 2011 tax year. As a result, the Department issued a proposed assessment imposing additional income tax, interest, and penalty for the 2011 tax year.

Taxpayer protested the assessment and submitted additional documents to support its protest. This Letter of Findings is written based on the information submitted and the information available within the Department's records and the protest file. Additional information will be provided as needed.

DISCUSSION

I. Corporate Income Tax – Net Operating Losses ("NOLs").

Upon reviewing Taxpayer's 2011 income tax return, the Department determined that Taxpayer did not have sufficient NOLs to be carried forward and utilized for tax year 2011. The Department's records noted that Taxpayer amended its 2010 income tax return pursuant to a federal RAR adjustment and that the amount of the NOLs it claimed did not match the records within the Department's system.

Taxpayer, to the contrary, claimed that it had sufficient NOLs, which were reviewed and approved by the Department in an audit performed in 2010 for tax year 2008. Thus, Taxpayer asserted that the Department erroneously disallowed the NOLs and that it was entitled to carry the NOLs forward and apply in tax year 2011.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dept of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

A corporation, which is required to file the Indiana corporate income tax return, is entitled to a net operating loss deduction. IC § 6-3-2-2.6(a). A corporation's Indiana net operating loss deduction is determined under IC § 6-3-2-2.6(c), which provides a computation that starts with the "taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for the modifications required by [IC 6-3-1-3.5](#)." I.R.C. § 172 requires the application of net operating loss limitations for corporations that have acquired certain "built-in loss" corporations. See I.R.C. § 172(l)(2) (providing "[f]or special limitations on net operating loss carryovers in the case of a corporate change of ownership, see section 382"). Thus, pursuant to I.R.C. § 382, when an "ownership change" occurred, the post-change corporations generally are allowed to carry over and use the pre-change NOLs. The statute also imposes conditions which limit the amount of the pre-change NOLs to be carried over.

Since I.R.C. § 172 incorporates the I.R.C. § 382 limitations into the computation of the federal net operating loss deduction and the federal net operating loss deduction as calculated under I.R.C. § 172 is the starting point

for the Indiana net operating loss deduction, the I.R.C. § 382 limitations are incorporated into the Indiana net operating loss deduction. After the I.R.C. § 382 limitations are incorporated into the calculation to arrive at Taxpayer's federal net operating loss as required by I.R.C. § 172, the loss is modified and apportioned as provided in section 2 of this chapter to determine the loss derived from sources within Indiana. See IC § 6-3-2-2.6(c)-(d)(2).

In this instance, Taxpayer timely filed its 2011 corporate income tax return. The Department reviewed the return and the NOLs, as claimed by Taxpayer in the 2011 return. However, after review, the Department disallowed some of the NOLs on the grounds that the Department's records showed that Taxpayer did not have losses for some of the tax years, resulting in an additional tax liability.

Taxpayer, to the contrary, maintained that, in 2010, the Department audited Taxpayer's business records for tax year 2008 and also reviewed the Indiana LLC's pre-acquisition NOLs. During that audit, the Department approved the pre-acquisition NOLs, which were available to be carried forward subject to I.R.C. § 382 limitations. Thus, Taxpayer asserted that it is entitled to utilize the approved pre-acquisition NOLs in its 2011 return subject to I.R.C. § 382 limitation. To support its protest, Taxpayer referred to the audit summary report concluded in 2010; Taxpayer also provided a copy of its workpaper detailing its calculation of carryovers of the pre-acquisition NOLs.

Upon review, Taxpayer's supporting documentation demonstrates that, based on the Department's 2010 audit conclusion, Taxpayer had pre-acquisition NOLs from Indiana LLC; that the pre-acquisition NOLs were approved by the Internal Revenue Service; and that the pre-acquisition NOLs were available to be carried over beginning in tax year 2008, subject to I.R.C. § 382 limitations. Thus, Taxpayer's protest is sustained pending audit verification concerning the amount of the pre-acquisition NOLs available to be carried forward and utilized in 2011 tax year.

In short, Taxpayer has provided sufficient documentation to demonstrate that it had pre-acquisition NOLs available to be carried forward subject to I.R.C. § 382 limitations. The Department's Audit Division will review Taxpayer's workpaper to verify the amount of the NOLs, which Taxpayer can utilize in 2011 tax year pursuant to I.R.C. § 382.

FINDING

Taxpayer's protest is sustained to the extent that Taxpayer has pre-acquisition NOLs from the Indiana LLC subject to I.R.C. § 382 limitation. The Department will verify the amount of NOLs that Taxpayer can carry forward and utilize in its 2011 income tax return.

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